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MT LEGISLATIVE HISTORY

Chapter 293 1989

Bill H _____ (S) 84 Original bill & hist. ✓ C

H. Committee on Judiciary		S. Committee on Judiciary	
Hearing Date(s) Jan 30	✓ C	Hearing Date(s) Mar 03	✓ C
Feb 01	✓ C	Mar 07	✓ C
	C		C
	C		C
Date Out Feb 01	✓ C	Mar 09	✓ C

Did this bill originate in an interim committee? ___ Yes ___ No

Committee _____ Report _____

Senator Mazurek asked if anything special needed to be done by a Montana notary to be legal in North Dakota. Senator Keating responded "NO" and said there were no registration or bonding requirements.

Senator Mazurek said he felt the bonding issue needed further study.

Senator Crippen said the committee had received letters regarding the bill. (Exhibits 5 and 6)

Closing by Sponsor: Senator Keating closed by stating that this would not require extra work for the Secretary of State's office if this bill were enacted. He closed.

HEARING ON SENATE BILL 84

Presentation and Opening Statement by Sponsor: Senator Vaughn of Libby, representing District 1, opened the hearing. She stated that SB 84 would require the registration of sexual offenders by the Department of Institutions and local law enforcement agencies; providing that registration cannot be waived in imposing sentence; and requiring mandatory treatment for sexual offenders imprisoned in the state prison. She explained the bill and its amendments. She presented copies of the amendments to the committee (See Exhibit 2.) She also read a letter from some Libby-area residents who wished to voice their opinion. (See Exhibit 3.)

List of Testifying Proponents and What Group they Represent:

Representative Dorothy Cody of Wolf Point, District 15
Ron Ardis, Attorney for the Child Protection Services
Mike McGrath, Lewis and Clark County Attorney
Mike Sherwood, Montana Trial Lawyers Association

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Representative Cody stated that, in her area, there was a group called Voices for Children, which acted as a strong

advocate for children who were sexually abused. They started an investigation on a registration law, and joined with Senator Vaughn and a Great Falls group who also expressed an interest. She felt this bill reflected their views on the subject and deserved the committee's consideration. The purpose of the bill was to send a strong message that child abuse would not be tolerated in the state of Montana.

Ron Ardis agreed that child abuse is a serious problem. Sexual offenders use conceit, fraud, conspiracy, law and protection to avoid detection. Once a person is a sexual offender, it becomes normal for them, usually originating in a dysfunctional family. He said that sex abuse continues from generation to generation. This law could aid in fighting the problem, he felt, as well as stand up to strict scrutiny by the Montana Supreme Court.

Mike McGrath stated that, last year, 22% of the population of the state prison were sex offenders and 25% of the new admissions to the prison were sex offenders. He said that, eventually, those people were released and would offend again if they are not treated. He supported registration and limitation of employment where children were present. He understood that the governor's budget contained $212,000 for the sex offender treatment program. He urged support of the bill.

Mike Sherwood appeared as a proponent, but said he had some concerns with the bill. He presented written testimony to the secretary. (See Exhibit 4.)

Questions From Committee Members: Senator Beck asked, rather than a 10-year registration, would Senator Vaughn consider a probationary period. She replied she wouldn't object if the committee saw fit to do that.

Senator Mazurek asked Dan Russell, administrator of the Department of Institutions, if he had any concerns about the bill. Dan replied that he worked with Senator Vaughn on the amendments. He said the Department of Justice didn't get into the business of registering anyone for programs such as this. Senator Vaughn said that they do register arsonists now. Mr. Russell felt that the Department of Institutions was better suited to handling the registration.

Senator Mazurek asked for Mr. Russell's comments on Mr. Sherwood's suggestions which would limit the registration to

people who are under state supervision. He said that the man in Libby (see Exhibit 3) would not have been registered because he had completed his entire sentence and was no longer under state supervision when he committed his brutal acts. Dan Russell replied that, once the person is released from prison, they would be registered for a period of ten years after release.

Senator Mazurek stated that Mr. Sherwood wanted to change that and Mr. Russell indicated he would prefer the bill as written.

Senator Beck asked for an opinion on the requirement of the treatment program at the prison. Mr. Russell stated that the amendment that Senator Vaughn had submitted came about as a result of the concern of the Department of Corrections. People who don't admit they have a problem are not very amenable to treatment, he said. He felt that those people should be allowed to get into the educational phase. By doing so, some individuals might finally admit they had a problem and accept treatment.

Senator Jenkins asked how he would feel about a 10-year parole to the end of the probation period. Mr. Russell indicated it would be fine with him.

Senator Beck asked if there were any sex offender criminals who were not sent to prison who might benefit from the program. Mr. Russell stated that there were. That was covered in Section 3, he said. Some people may get suspended sentences for certain sexual offenses.

Closing by Sponsor: Senator Vaughn closed by stating that a first offense is often looked at lightly. But, she felt that could lead to more and more offenses which were more and more serious, sometimes leading to death. She felt that the innocent needed to be protected and thought the bill would be a way of doing that. She urged passage of the bill.

ROLL CALL

JUDICIARY COMMITTEE

51st LEGISLATIVE SESSION -- 1989 Date Jan 30 1989

NAME	PRESENT	ABSENT	EXCUSED
SENATOR CRIPPEN	✓		
SENATOR BECK	✓		
SENATOR BISHOP	✓		
SENATOR BROWN	✓		
SENATOR HALLIGAN		✓	
SENATOR HARP	✓		
SENATOR JENKINS	✓		
SENATOR MAZUREK	✓		
SENATOR PINSONEAULT			
SENATOR YELLOWTAIL	✓		

Each day attach to minutes.

SENATE JUDICIARY
EXHIBIT NO. 2
DATE 1-30-89
BILL NO. SB 84

Amendments to Senate Bill No. 84
First Reading Copy

Requested by Senator Vaughn
For the Committee on Judiciary

Prepared by Connie Erickson
January 9, 1989

1. Title, line 9.
Following: "prison;"
Insert: "RESTRICTING EMPLOYMENT OF PERSONS REQUIRED TO REGISTER;"

2. Page 1, line 23.
Strike: "45-5-504"

3. Page 2, line 7.
Strike: "The department shall obtain the address where the person expects to reside upon release or discharge or suspension of his sentence"
Insert: "Upon sentencing the district court shall obtain the address where the person expects to reside during the term of his sentence, upon release or discharge of his sentence, or during the term of his suspension and shall notify the department"

4. Page 3, line 11.
Following: "department"
Strike: remainder of line 11 and lines 12, 13, and 14 in their entirety
Insert: "and the local law enforcement agency, having local jurisdiction over the new place of residence."

5. Page 4.
Strike: lines 5 and 6 in their entirety
Insert: "may be sentenced to a term of imprisonment of not less than 90 days or a fine not to exceed $250, or both."

6. Page 7, line 14.
Following: "the"
Insert: "educational phase of the"

7. Page 7, line 15.
Strike: "treatment"

SENATE JUDICIARY

EXHIBIT NO. 1

DATE 1-30-89

BILL NO. SB 84

8. Page 7.
Following: line 15
Insert: "NEW SECTION Section 10. Employment restrictions. (1) A person required to register under [sections 1 through 9] may not be employed in or own or operate a child day-care facility or be employed by a school district for the duration of the registration.
(2) A person required to register under [sections 1 through 9] who holds a teacher or specialist certificate shall have that certificate suspended for the duration of the registration.

NEW SECTION. Section 11. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Renumber: subsequent sections

Amendments to both the copy — Brian to Chalmers from Jeff Sant etc

For Amnesty: Prosecutor Office Jeff Sant - Norwell Comp
Tribe Mr Trail from Clark to Attorney
Christy Mint - Montana Public Center
Richard Elsmore

Have given title to scatters from work at home
Can we afford the program - can we not afford it the at
so many times the last offense that guilty or innocent but
a 2nd time invariably ends in murder.

22% of State prison - out offenders
25% new admission were ex offenders
Ben Russell - Dept of Corrections

No opposition in Senate Judiciary -

SENATE JUDICIARY
EXHIBIT NO 3
DATE 1-30-89
BILL NO SB 84

P.O. Box 599
Troy, MT 59935
January 15, 1989

Senator Eleanor Vaughn
Capitol Station #130
Helena. MT 59620

Dear Senator Vaughn,

We would like to express our very strong support of Senate Bill #84. Young Ryan Van Luchen was brutally murdered by a man who had been previously convicted of sexually assaulting 2 young boys in the same area Ryan's body was found in. We feel that if the provisions in this bill had been law, perhaps this terrible tragedy would have been avoided.

We also support any other legislation that would assist in the protection of our children (and punishment of those who harm them) such as the other bill now proposed that would allow for the death penalty in cases where death resulted during a sexual assault.

Thank you so much for you hard work in presenting this legislation. we greatly appreciate it, and appreciate your efforts in keeping us informed of what is happening in our State Legislature.

Jane L. Bain
JANE L. BAIN

Doris M. Davis
DORIS M. DAVIS

Velva Shaver
VELVA SHAVER

Earl F. Bain
EARL F. BAIN

Linda J. Meyer

SENATE JUDICIARY
EXHIBIT NO. 4
DATE 1-30-89
BILL NO. SB 84

WITNESS STATEMENT

NAME Mike Sherwood BUDGET

ADDRESS

WHOM DO YOU REPRESENT? MTLA

SUPPORT ✓ OPPOSE AMEND

COMMENTS:

Re: SB 84

I support with these concerns:

1) 45-5-302 includes misdemeanors sexual assault

2) § 7 may ~~conflict~~ conflict with Art II, § 28 Mont. Const. regarding restoration of all civil rights after release from state supervision

3) Mandatory Treatment in Program may

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

FORM CS-34A

DATE 1-30-87

COMMITTEE ON Judiciary

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Check One: Oppose
Pat Miller	MT Liability Coalition			
Rep Bob Gilbert	House			
Rep Dorothy Bradley	HB 20	SB84	✓	
Bob Stermitz				
Pat Melcher				
Keith Lewis				
Iris Hartford				
Joan DeBear				
Paul Foster				
Rebecca Danforth				
Debbie Proffit				
Patti Hafft				
Pat Hartford				
Mike Sherwood	MTLA	SB84	✓	

Amendments: Senator Jenkins MOVED to increase the $10,000 on line 7, page 2 to $50,000. The MOTION CARRIED UNANIMOUSLY.

Senator Jenkins MOVED on line 19, after "contact" to delete line 20 and 21. Valencia said the amendment is essentially to delete "or" on line 19, and all the way through 21, then any technical corrections. The MOTION CARRIED UNANIMOUSLY.

Recommendation and Vote: Senator Harp MOVED that Senate Bill 229 DO PASS. The MOTION FAILED on a vote of 3 to 7 with Senators Brown, Harp and Yellowtail voting YES.

Senator Harp MOVED a substitute motion to TABLE THE BILL. There was no vote taken.

Senator Beck MOVED that Senate Bill 229 DO PASS AS AMENDED. The MOTION CARRIED UNANIMOUSLY.

DISPOSITION OF SENATE BILL 84

Discussion: The committee discussed the amendments prepared by Senator Vaughn. (See Exhibit 4.) Valencia Lane said the first amendment changed the title. A new section was added requiring internal changes. The first major amendment (#4) requires the district court, rather than the Department of Institutions, to obtain the place of residence an offender had following release from prison, she said. The committee felt there were problems with that. (See Motion A below.) Valencia said that registration laws have been upheld in Utah and California, but probably would be struck down if indecent exposure were included, which was considered to be less serious. We presently have a registration of arsonists, she said.

Valencia explained the amendment (#5) requiring the local law enforcement to forward the new address (if he moves) to the department and to the local law enforcement at the new place of residence.

She explained New Section 9 which restricted places of employment. See Motion below.

Amendment #3 would strike 45-5-504, which would remove indecent exposure from the bill, Valencia told the committee (p.1, line 23). (See Senator Jenkins MOTION B below.)

Amendments and Vote: MOTION A. Senator Mazurek MOVED that the committee DELETE Amendment #4 from the Vaughn set of amendments. The MOTION CARRIED UNANIMOUSLY.

MOTION B. Senator Jenkins MOVED Amendment #3. The MOTION CARRIED UNANIMOUSLY.

Senator Pinsoneault MOVED New Section 9 and the title be corrected. The MOTION CARRIED by a vote of 9 to 3, with Senators Mazurek, Crippen and Yellowtail voting NO.

Senator Crippen MOVED Amendments #9 and #10 (educational requirement). The MOTION CARRIED by a vote of 8 to 2, with Senators Yellowtail and Pinsoneault voting NO.

Valencia said that Nick Rotering had suggested an amendment on p. 1, line 25, that subsection 3 should be inserted following 45-5-503. Senator Crippen MOVED that amendment. The MOTION CARRIED UNANIMOUSLY.

(All amendments except #4, plus the Rotering amendment Passed.)

Recommendation and Vote:
Senator Halligan MOVED that Senate Bill 84 DO PASS AS AMENDED. The MOTION CARRIED UNANIMOUSLY.

DISPOSITION OF HOUSE BILL 91

Discussion: Senator Mazurek thought the suggested raise in price for copies of death certificates was too high.

Amendments and Votes: Senator Halligan MOVED to amend allowing a $5.00 copy fee.

Senator Jenkins MOVED a SUBSTITUTE MOTION allowing a $5.00 fee for the first copy and a $3.00 fee for copies thereafter.

Recommendation and Vote: Senator Jenkins MOVED that Senate Bill 91 BE CONCURRED IN AS AMENDED. The MOTION CARRIED UNANIMOUSLY.

ROLL CALL

JUDICIARY COMMITTEE

51st LEGISLATIVE SESSION -- 1989 Date Feb 1

NAME	PRESENT	ABSENT	EXCUSED
SENATOR CRIPPEN	✓		
SENATOR BECK	✓		
SENATOR BISHOP	✓		
SENATOR BROWN	✓		
SENATOR HALLIGAN	✓		
SENATOR HARP	✓		
SENATOR JENKINS	✓		
SENATOR MAZUREK	✓		
SENATOR PINSONEAULT	✓		
SENATOR YELLOWTAIL	✓		

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration SB 84 (first reading copy -- white), respectfully report that SB 84 be amended and as so amended do pass:

1. Title, line 9.
Following: "IRISON,"
Insert: "RESTRICTING EMPLOYMENT OF PERSONS REQUIRED TO REGISTER,"

2. Page 1, lines 14 and 17.
Page 2, lines 6 and 17.
Page 3, lines 2, 7, 16, 17, 20, 23, and 24.
Page 4, lines 2 and 4.
Strike: "8"
Insert: "5"

3. Page 1, line 23.
Following: "45-5-502"
Insert: "(3)"
Strike: "45-5-504,"

4. Page 3, lines 11 through 14.
Following: "department." on line 11
Strike: remainder of line 11 through "residence" on line 14
Insert: "and the local law enforcement agency having [illegible] jurisdiction over the new place of residence"

5. Page 4, lines 5 and 6.
Following: line 4
Strike: line 5 through "felony" on line 6
Insert: "may be sentenced to a term of imprisonment of not less than 90 days or a fine not to exceed $[illegible] or both"

continued

6. Page 4, line 7.
Following: line 6
Insert: "NEW SECTION. Section 9. Employment restrictions. (1) A person required to register under [sections 1 through 9] may not be employed in or own or operate a child day-care facility or be employed by a school district for the duration of the registration.

(2) A person required to register under [sections 1 through 9] who holds a teacher or specialist certificate shall have that certificate suspended for the duration of the registration."
Renumber: subsequent sections

Page 7, line 11.
Strike: "9"
Insert: "10"

8. Page 7, line 14.
Following: "the"
Insert: "educational phase of the"

9. Page 7, line 15.
Strike: "treatment"

10. Page 7, line 20.
Following: line 19
Insert: "NEW SECTION. Section 12. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."
Renumber: subsequent section

AND AS AMENDED DO PASS

Signed: Bruce D. Crippen, Chairman

hc
2/2/89
1:49 pm

EXHIBIT NO. 4
DATE 2-1-89
BILL NO. SB 84

Amendments to Senate Bill No. 84
First Reading Copy (WHITE)

Requested by Senator Vaughn
For the Committee on Judiciary

Prepared by Connie Erickson 1/9/89
(Revised by Valencia Lane 1/30/89)

1. Title, line 9.
Following: "PRISON;"
Insert: "RESTRICTING EMPLOYMENT OF PERSONS REQUIRED TO REGISTER;"

2. Page 1, lines 14 and 17.
Page 2, lines 6 and 17.
Page 3, lines 2, 7, 16, 17, 22, and 24.
Page 4, lines 2 and 4.
Strike: "8"
Insert: "9"

3. Page 1, line 23.
Strike: "45-5-504,"

4. Page 2, lines 7 through 9.
Following: "sentenced." on line 7
Strike: remainder of line 7 through "sentence." on line 9
Insert: "Upon sentencing, the district court shall obtain the address where the person expects to reside during the term of his sentence, upon release or discharge of his sentence, or during the term of his suspension and shall notify the department."

5. Page 3, lines 11 through 14.
Following: "department" on line 11
Strike: remainder of line 11 through "residence" on line 14
Insert: "and the local law enforcement agency having local jurisdiction over the new place of residence"

6. Page 4, lines 5 and 6.
Following: line 4
Strike: line 5 through "felony" on line 6
Insert: "may be sentenced to a term of imprisonment of not less than 90 days or a fine not to exceed $250, or both"

7. Page 4, line 7.
Following: line 6

SENATE JUDICIARY
EXHIBIT NO. 4
DATE 2-1-89
BILL NO. SB 84

Insert: "NEW SECTION. Section 9. Employment restrictions. (1) A person required to register under [sections 1 through 9] may not be employed in or own or operate a child day-care facility or be employed by a school district for the duration of the registration.

(2) A person required to register under [sections 1 through 9] who holds a teacher or specialist certificate shall have that certificate suspended for the duration of the registration."

8. Page 7, line 11.
Strike: "8"
Insert: "9"

9. Page 7, line 14.
Following: "the"
Insert: "educational phase of the"

10. Page 7, line 15.
Strike: "treatment"

11. Page 7, line 20.
Following: line 19
Insert: "NEW SECTION. Section 12. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."
Renumber: subsequent section

Amendment proposed by Nick Rotering
of the Department of Institutions

A. Page 1, line 23.
Following: "45-5-502"
Insert: "(3)"

LC 0079/01

Senate BILL NO. 84

INTRODUCED BY Linda Vaughn

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE REGISTRATION OF SEXUAL OFFENDERS BY THE DEPARTMENT OF INSTITUTIONS AND LOCAL LAW ENFORCEMENT AGENCIES; PROVIDING THAT REGISTRATION CANNOT BE WAIVED IN IMPOSING SENTENCE; REQUIRING MANDATORY TREATMENT FOR SEXUAL OFFENDERS IMPRISONED IN THE STATE PRISON; AMENDING SECTION 46-18-201, MCA; AND PROVIDING AN EFFECTIVE DATE."

RESTRICTING EMPLOYMENT OF PERSONS REQUIRED TO REGISTER.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1.** Short title. [Sections 1 through 9] may be cited as the "Sexual Offender Registration Act".

NEW SECTION. **Section 2.** Definitions. As used in [sections 1 through 9], the following definitions apply:

(1) "Department" means the department of institutions provided for in Title 2, chapter 15, part 23.

(2) "Sexual offender" means a person who has been convicted of a sexual offense.

(3) "Sexual offense" means:

(a) any violation of 45-5-502, 45-5-503, ~~45-5-504,~~ 45-5-505, 45-5-507, or 45-5-625; or

(b) any violation of a law of another state or the federal government reasonably equivalent to a violation listed in subsection (3)(a).

NEW SECTION. **Section 3.** Release of sexual offender -- duties of court and department. A sexual offender must be informed in writing at the time of sentencing of his duty to register under [sections 1 through 9] by the court in which he is sentenced. ~~The department shall obtain the address where the person expects to reside upon release or discharge or suspension of his sentence.~~ The department shall inform the appropriate law enforcement agency having local jurisdiction where the person expects to reside.

upon sentencing the district co
shall obtain the address where the person exp
to reside during the term of his sentence, u
release or discharge of his sentence, or
during the term of his suspension and sha
notify the department.

NEW SECTION. **Section 4.** Release of sexual offender from place of confinement -- duties of official in charge. A sexual offender who is released from the custody of the department of institutions or the department of family services must be informed in writing prior to release of his duty to register under [sections 1 through 9] by the official in charge of the place of confinement. The official shall obtain the address where the person expects to reside upon his release and report the address to the department of institutions. The department shall inform the appropriate law enforcement agency having local jurisdiction where the person expects to reside.

NEW SECTION. **Section 5.** Duty to register. A sexual offender shall, within 14 days of coming into a county in

INTRODUCED BIL
SB 84

which he resides or is temporarily domiciled, register, as required under [sections 1 through 9], with the chief of police of the municipality or the sheriff of the county if he resides in an area other than a municipality.

NEW SECTION. **Section 6.** Change of address -- duty to inform. If a person required to register under [sections 1 through 9] changes his residence, he shall within 10 days give written notification of his new address to the law enforcement agency with whom he last registered. The law enforcement agency shall, within 3 days after receipt of such information, forward it to the department ~~The department shall forward the information to the law enforcement agency having local jurisdiction over the new place of residence.~~ and the local law enforcement agency having local jurisdiction over the new place of residence.

NEW SECTION. **Section 7.** Duration of registration. (1) A person required to register under [sections 1 through 9] shall comply with [sections 1 through 9] for a period of 10 years after conviction, if not imprisoned during that period. If a person required to register under [sections 1 through 8] is imprisoned during the initial 10-year period, he shall comply with the provisions of [sections 1 through 9] for a period of 10 years after release from prison.

(2) Liability for noncompliance with [sections 1 through 9] terminates at the expiration of 10 years from the date of initial registration, provided that during the

10-year period the convicted sexual offender does not again become subject to [sections 1 through 8].

NEW SECTION. **Section 8.** Penalty. A sexual offender who knowingly fails to register under [sections 1 through 8] ~~is guilty of a misdemeanor. On a first offense, on each subsequent offense, the person is guilty of a felony.~~ may be sentenced to a term of imprisonment not less than 90 days or a fine not to exceed $250, or both.

NEW SECTION. Section 9. see Amdt #7

Section 10. Section 46-18-201, MCA, is amended to read:

"46-18-201. Sentences that may be imposed. (1) Whenever a person has been found guilty of an offense upon a verdict or a plea of guilty, the court may:

(a) defer imposition of sentence, excepting sentences for driving under the influence of alcohol or drugs, for a period, except as otherwise provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of the deferred imposition. Such reasonable restrictions or conditions may include:

(i) jail base release;

(ii) jail time not exceeding 180 days;

(iii) conditions for probation;

(iv) restitution;

(v) payment of the costs of confinement;

(vi) payment of a fine as provided in 46-18-231;

(vii) payment of costs as provided in 46-18-232 and

46-18-233;

(viii) payment of costs of court appointed counsel as provided in 46-8-113;

(ix) community service;

(x) any other reasonable conditions considered necessary for rehabilitation or for the protection of society; or

(xi) any combination of the above.

(b) suspend execution of sentence up to the maximum sentence allowed for each particular offense. The sentencing judge may impose on the defendant any reasonable restrictions or conditions during the period of suspended sentence. Such reasonable restrictions or conditions may include any of those listed in subsections (1)(a)(i) through (1)(a)(xi).

(c) impose a fine as provided by law for the offense;

(d) require payment of costs as provided in 46-18-232 or payment of costs of court-appointed counsel as provided in 46-8-113;

(e) commit the defendant to a correctional institution, with or without a fine as provided by law for the offense;

(f) impose any combination of subsections (1)(b) through (1)(e).

(2) If any financial obligation is imposed as a

condition under subsection (1)(a), sentence may be deferred for a period not exceeding 2 years for any misdemeanor or for a period not exceeding 6 years for any felony, regardless of whether any other conditions are imposed.

(3) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, the court shall consider any elapsed time and either expressly allow part or all of it as a credit against the sentence or reject all or part as a credit and state its reasons in the order. Credit, however, must be allowed for jail time already served.

(4) Except as provided in 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended: 45-5-103, 45-5-202(3) relating to aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-503(2) and (3), 45-9-101(2) and (3), 45-9-102(3), and 45-9-103(2).

(5) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102 may not be deferred or suspended.

(6) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of a defendant who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the

sentence was suspended.

(7) If the victim was less than 16 years old, the imposition or execution of the first 30 days of a sentence of imprisonment imposed under 45-5-502(3), 45-5-503, 45-5-504, 45-5-505, or 45-5-507 may not be deferred or suspended. Section 46-18-222 does not apply to the first 30 days of such imprisonment.

(8) In imposing a sentence on a defendant convicted of a sexual offense as defined in [section 2], the court may not waive the registration requirement provided in [sections 1 through 9].

(9) A person convicted of a sexual offense, as defined in [section 2], and sentenced to imprisonment in the state prison shall enroll in the educational phase of the prison's sexual offender ~~treatment~~ program."

NEW SECTION. Section 11. Extension of authority. Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

NEW SECTION. Section 12. Severability. see amdmt # 11

NEW SECTION. Section 13. Effective date. [This act] is effective July 1, 1989.

-End-

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 2-1-89 Senate Bill No. 84 #1 Time

NAME	YES	NO
SEN. BISHOP	✓	
SEN. BECK	✓	
SEN. BROWN	✓	
SEN. HALLIGAN	✓	
SEN. HARP	✓	
SEN. JENKINS	✓	
SEN. MAZUREK		✓
SEN PINSONEAULT	✓	
SEN. YELLOWTAIL		✓
SEN. CRIPPEN		✓
	7	3

Rosemary Jacoby
Secretary

Sen. Bruce Crippen
Chairman

Motion: Daughter Amendments
Mazurek - Delete #4 UNANIMOUS
Jenkins - Include Sec. 9 & amend title 7-3 (above)

SF-3 (Rev. 1987)

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 2-1-89 Senate Bill No. 84 Time #2

NAME	YES	NO
SEN. BISHOP	✓	
SEN. BECK	✓	
SEN. BROWN	✓	
SEN. HALLIGAN	✓	
SEN. HARP	✓	
SEN. JENKINS	✓	
SEN. MAZUREK	✓	
SEN PINSONEAULT		✓
SEN.YELLOWTAIL		✓
SEN. CRIPPEN	✓	
	8	2

Rosemary Jacoby
Secretary

Sen. Bruce Crippen
Chairman

Motion: Jenkins - amend #9+10 - Passed 8-2 (see above)

SF-3 (Rev. 1987)

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 2-1-89 Senate Bill No. 84 Time #3

NAME	YES	NO
SEN. BISHOP	✓	
SEN. BECK	✓	
SEN. BROWN	✓	
SEN. HALLIGAN	✓	
SEN. HARP	✓	
SEN. JENKINS	✓	
SEN. MAZUREK	✓	
SEN PINSONEAULT	✓	
SEN.YELLOWTAIL	✓	
SEN. CRIPPEN		✓
	9	1

Rosemary Jacoby
Secretary

Sen. Bruce Crippen
Chairman

Motion: Do Pass as Amended (Harp) Carried

SF-3 (Rev. 1987)

None.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members: Rep. Eudaily questioned Sen. Harding as to why the effective date had been stricken in the original bill? Sen. Harding responded that the Senate Judiciary Committee objected to the effective immediate date unless it is absolutely necessary.

Closing by Sponsor: Senator Harding closed.

DISPOSITION OF SENATE BILL 120

Motion: A motion was made by Rep. Mercer to BE CONCURED IN, motion seconded by Rep. Gould.

Discussion: None.

Amendments, Discussion, and Votes: None.

Recommendation and Vote: A vote was taken on the motion that SB 120 BE CONCURED IN and CARRIED unanimously.

HEARING ON SENATE BILL 84

Presentation and Opening Statement by Sponsor:

Senator Vaughn, Senate District 1 stated that SB 84 is an act requiring a registration of sexual offenders by the Dept. of Institutions and local enforcement agencies. It provides that registration cannot be waived in imposing sentences requiring mandatory treatment for sexual offenders imprisoned in the State Prison and restricting employment of persons required to register.

Testifying Proponents and Who They Represent:

Steve Waldron, Executive Director Montana Mental Health Centers
Susan Sachsenmaier, Mental Health Forensic Consultant
Carolyn Clemens, Lewis and Clark Deputy County Attorney

Proponent Testimony:

Steve Waldron stated that the therapists who provide treatment to the sex offenders in the mental health center system support this bill as do the mental health centers. They see this bill as a step toward assuring protection for society as well as assuring that these offenders will be treated and

will have constraints put on them.

Susan Sachsenmaier presented before the Committee a written testimony voicing her support of SB 84 (EXHIBIT 1).

Carolyn Clemens commented that to her understanding about 20% of the population in the Montana State Prison is there because of sex offenses. Additionally, approximately 25% of the new admissions on a yearly basis are sex offenders in the Montana State Prison. As has been previously testified, the research in this area shows that most people that are apprehended for sex offenses have been there before. This is not the first time they have committed a sex offense. Mrs. Clemens stated that she is particularly supporting the requirement of treatment within the prison. She feels that it is important to require these people to go through the educational phase of treatment as it is not pleasant for sex offenders to go through and it is not something they would do on their own. Indications have been that unless people are subjected to treatment and forced to go through this program they will continue to offend time and time again. Mrs. Clemens continued that the more we can do to educate sex offenders the better the chance we have of saving the victims in the future.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members: Rep. Eudaily expressed to Senator Vaughn that he is uncomfortable with Section 9 of the bill on the employment restrictions. What about dentists, doctors, nurses, counselors, business people, preschoolers, and university people employed who also deal with young people? Senator Vaughn stated that the reason Section 9 is shown the way it is is because of a separate bill that was drafted in regard to education employment. That particular bill strictly limited it to education and did not include other people or expand further. Sen. Vaughn commented that she would have no quarrel with amending Section 9 to include other people. Rep. Eudaily then suggested to Sen. Vaughn to eliminate Section 9 and leave the remainder of the bill the way it is. Sen. Vaughn stated that she would have some concerns if Section 9 was eliminated and would prefer to have it amended in some way to include those people that work with people and/or children or anyone who has been convicted of sexual offense to not be able to work with children during that time.

Rep. Eudaily continued by asking Sen. Vaughn what her definition of children is. Sen. Vaughn stated that when they were introducing the bill it was involving children under the age of 18 years.

Rep. Boharski also questioned Section 9 stating that it does not appear to fit in the rest of the bill. He inquired of Ms. Sachsenmaier if she saw any rationale for a ten year limit? Why not make it life? Ms. Sachsenmaier stated that it really ought to be life. As long as a person has the physical energy to get up and move around that person is susceptible to committing a sexual offense. In follow up programs with sexual offenders, the parole stipulations typically have identified the precursors to that persons crime and forbid the person from going anywhere near that type of situation. This means that a child molester is not allowed to go near play grounds or schools or anyplace where children frequent unless that person is supervised. Ms. Sachsenmaier stated that Section 9, as she understands it, is incorporating what knowledgeable parole officers consistently incorporate in after care plans.

Rep. Hannah questioned Ms. Sachsenmaier's testimony where she stated that 100% of sexual offenders were abused as children and asked if she had documentation of that information. Ms. Sachsenmaier stated that she could research those statistics and submit the information for the Committee's review.

Closing by Sponsor: Rep. Vaughn closed stating that this is something that we can't afford not to do and hopefully by requiring them to go through the educational phase, we might be able to get more of them helped. Rep. Vaughn submitted to the Committee a community letter in support of SB 84 (EXHIBIT 2), and made it known to the Committee that Rep. Dorothy Cody wished to testify on behalf of the bill but was unable to attend.

DISPOSITION OF SENATE BILL 84

Motion: A motion was made by Rep. Darko to BE CONCURED IN, motion seconded by Rep. Brooke.

Discussion: Rep. Eudaily expressed his concerns in regard to section 9. He stated that if it is so inclusive that it covers everybody then it is unfair to put it in a very restricted way as it now stands.

In response to Rep. Eudaily, Rep. Darko commented that when professional people loose their license they must appear before their board. She suggested to Rep. Eudaily that they could insert into Section 9 that a hearing before the Board of Public Education be entitled before their certificate was suspended. This way they would go through a hearing process

before it was automatically revoked.

Rep. Mercer stated that the whole concept is beyond the scope of the title of how this bill was originally introduced. It doesn't seem that it was intended at all to restrict employment directly. Rep. Mercer suggested that perhaps a better way to approach this would be to make this information available to anyone who is going to be hiring and let them make their own decision.

Amendments, Discussion, and Votes: Rep. Eudaily moved to amend section 9 out of the bill, motion seconded by Rep. Hannah. A vote was taken on the amendment and CARRIED with Rep. Darko voting No.

Rep. Gould moved to amend page 4, lines 2-6, strike "liability for non-compliance with", insert the convicted sexual offenders duty to register under. Motion seconded by Rep. Knapp and CARRIED unanimously.

Rep. Hannah motioned to amend page 2, line 1, 45-5-507, following incest statute, insert (unless the act occurred between two consenting persons 16 years of age or older). Motion seconded by Rep. Mercer and CARRIED unanimously.

Recommendation and Vote: No further action was taken on SB 84.

HEARING ON SENATE BILL 12

Presentation and Opening Statement by Sponsor:

Senator Mike Halligan, Senate District 29 in Missoula stated that the purpose of SB 12 is simply to allow the same medical legal panel to be used in a malpractice claim when a doctor or health care professional or the facility is sued.

Testifying Proponents and Who They Represent:

Sheila Stearns, University of Montana

Proponent Testimony:

Sheila Stearns, voicing support of SB 12 stated that she was speaking on behalf of Dr. Robert Curry, Director of the University of Montana Health Service. The University clearly supports this bill and believes it simply extends to all college and university health operations the same intervening layer of protection from frivolous malpractice suits that is already extended to the rest of the medical community.

Testifying Opponents and Who They Represent:

None.

DAILY ROLL CALL

JUDICIARY COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date MARCH 3, 1989

NAME	PRESENT	ABSENT	EXCUSED
REP. KELLY ADDY, VICE-CHAIRMAN			X
REP. OLE AAFEDT	X		
REP. WILLIAM BOHARSKI	X		
REP. VIVIAN BROOKE	X		
REP. FRITZ DAILY			X
REP. PAULA DARKO	X		
REP. RALPH EUDAILY	X		
REP. BUDD GOULD	X		
REP. TOM HANNAH	X		
REP. ROGER KNAPP	X		
REP. MARY McDONOUGH	X		
REP. JOHN MERCER	X		
REP. LINDA NELSON	X		
REP. JIM RICE	X		
REP. JESSICA STICKNEY	X		
REP. BILL STRIZICH	X		
REP. DIANA WYATT	X		
REP. DAVE BROWN, CHAIRMAN	X		

EXHIBIT 1
DATE 3-3-89
HB SB 84

DATE: March 1, 1989

TO: Members of the Legislature

RE: Senate Bill 84

FROM: Susan J. Sachsenmaier, doctoral candidate in Clinical Psychology, Forensic consultant in mental health

I work as a psychologist on the Forensic units at Montana State Hospital. The greatest part of my workload is the evaluation of persons committed for an examination pursuant to criminal charges. Approximately 40% of those I and my colleagues evaluate are charged with a sexual crime or crimes, ranging from non-forceful child molestation to rape, murder and mutilation. I also provide expert witness testimony throughout the state relevant to the disposition of criminal charges of those defendants whom I have evaluated.

Although the number of inconsistencies from one sex offender to another is debated by experts in the field, there are a few traits attributable to sex offenders upon which consensus in the field has been reached. One trait which can be assumed to apply in general to any sex offender is that the person is psychologically globally disordered; that is, the person is not "mostly healthy with just a little problem in sexual behavior." The sexual offender needs treatment and education consisting minimally of training in socialization skills, training in appropriate sex role expectations, treatment for past sexual victimization and/or other trauma, training in empathy for others, anger control skills, relaxation skills and self-esteem building. Of course there is no guarantee that anyone completing treatment of this type will not reoffend. Recidivism in this population is higher than in any other segment of the criminal population, which is why I say that the treatment and education which Senate Bill 84 requires is minimal.

Research by foremost experts in the field of evaluation and treatment of sex offenders now spans about a 40 year period. A review of research reporting treatment results shows that for over 60% of dangerous sex offenders, a total treatment effort including those components outlined in the above paragraph and adding postrelease supportive care (contact with legal and mental health systems), has a profound effect on their lives and successful adoption of a healthier sexual lifestyle. I must emphasize the importance of longterm treatment: a sex offender is never considered "cured"; rather, successful treatment and follow-up by community officials results in the sex offender developing and maintaining control of his or her dangerous behavior, much as an alcoholic must learn to control his or her behavior, but is never considered "cured" of the disease.

EXHIBIT 1
DATE 3-3-89
SB 84

About 10-15% of sex offenders respond to a total treatment and follow-up effort with a modest effect--their dangerousness is reduced, but overall they retain a maladaptive lifestyle. Treatment for the remaining 15 % appears to have no effect at all on the reduction of dangerous sexual behavior.

A second trait which experts in the field agree applies in general to any sex offender is that he or she lacks strong internal controls and has a much higher chance of functioning within the law if society demonstrates its concern by establishing strong external controls. I believe registration of convicted sex offenders with local law enforcement agencies offers some degree of external control to those who have demonstrated their own lack of internal control. I believe notification of officials within 14 days of change of address is too loose, however, and recommend that it be tightened to a period of 7 days.

Research has shown that legal sanctions do serve as deterrents to sexual offense recidivism. Although it is true that society may never be successful at totally eliminating criminal behavior, we as responsible citizens must nevertheless continue to strive to protect innocent victims from malevolent perpetrators. I have many times interviewed sex offenders who had initially been given a deferred prosecution for their sex crimes with the stipulation that they obtain treatment and remain in contact with legal officials. Often, these people do well up until the final month or two of the deferment period, and then do something which revokes the deferment and again involves law enforcement officials. Many sex offenders know that they have serious problems controlling their own sexual urges and knowingly or unknowingly seek to remain under the supervision of the legal system.

Research conducted on the etiology of sexually assaultive behavior has shown that 100% of sexual offenders have been sexually offended against. This is not to say that everyone who is sexually abused becomes a sex offender, but the experience of sexual victimization, especially for males, greatly increases the probability that the abused person will become an abuser. By far, the vast majority of sexually victimized girls and boys never report the abuse due to familial and societal sanctions. Later in life, when many of these same people become sex offenders, they are unlikely to be arrested. Research shows that for every sex offense that comes to the attention of legal authorities, that person has probably committed up to 100 unknown-of sexual crimes. In the rare instance that a person is arrested, it is currently extremely unlikely that that person will receive treatment or spend a significant amount of time incarcerated. Thus, the sex offenses continue and the cycle goes on and on and on.

EXHIBIT 1
DATE 3-3-89
HB SB 84

When sex offenders are paroled from correctional institutions or given deferred prosecutions, a sound legal contract is typically prepared which explicitly forbids the sex offender to go near any place or any people which have been identified as precursors to that person's dangerous sexual behavior. For example, a child molester is not allowed to go near schools or playgrounds or to take a job which puts him in contact with children. A rapist is not allowed to drive alone after dark and must document every mile he puts on his vehicle. Any type of sex offender is prohibited from using alcoholic beverages and illegal street drugs, as these substances significantly decrease self-control and distort judgement.

The estimated $100,000 per year price tag on this bill seems minimal when compared to the potential savings which will result from the State making fewer arrests, prosecuting fewer sex offenders, and compensating and treating fewer victims due to the fact that most criminals, especially sex offenders, tend to act out less when they are under scrutiny by the law. It appears obvious to me that the people arguing against this bill lack insight into the exorbitant social costs imposed by violence, especially sexual violence. Research has shown that 75% to 95% of hospitalized psychiatric patients are victims of violence, a vast percentage of this being sexual. It seems that society cannot keep its head in the sand much longer regarding the rampant incidence of sexual and physical abuse which is directly related to both crime rate and psychiatric disorder. Also, if this bill prevented just one sex crime per year, it would be worth it. Who among us can ethically and morally put a price on human life?

Senate Bill 84 is a good bill. It appropriately addresses many of the issues relevant to the beginning control of sexual crimes against innocent others. The government's financial resources are much better spent in the prevention of sexual victimization than in supporting the enormous costs of treatment of the victim and the victim's family,&trying, convicting and incarcerating the criminal.

Over and over again, it has been demonstrated that when society begins to take responsibility for destructive behavior by enacting laws against it, individuals perceive that they are being given a clear message and also begin to take responsibility for their behavior. The laws against domestic abuse are one example. As legislators duly elected by the people of Montana, I believe you have the responsibility to give a clear message to sex offenders that society will no longer silently stand by; rather, we will do everything in our power to stop sexual crimes.

VOTE FOR SENATE BILL 84.

EXHIBIT 2
DATE 3-3-89
SB 84

P.O. Box 599
Troy, MT 59935
January 15, 1989

Senator Eleanor Vaughn
Capitol Station #130
Helena, MT 59620

Dear Senator Vaughn.

We would like to express our very strong support of Senate Bill #84. Young Ryan Van Luchen was brutally murdered by a man who had been previously convicted of sexually assaulting 2 young boys in the same area Ryan's body was found in. We feel that if the provisions in this bill had been law, perhaps this terrible tragedy would have been avoided.

We also support any other legislation that would assist in the protection of our children (and punishment of those who harm them) such as the other bill now proposed that would allow for the death penalty in cases where death resulted during a sexual assault.

Thank you so much for you hard work in presenting this legislation. We greatly appreciate it, and appreciate your efforts in keeping us informed of what is happening in our State Legislature.

Jane L. Bain
JANE L. BAIN

Doris M. Davis
DORIS M. DAVIS

Velva Shaver
VELVA SHAVER

Earl F. Bain
EARL F. BAIN

Linda J. Meyer

VISITORS' REGISTER

JUDICIARY COMMITTEE

BILL NO. SENATE BILL 84 DATE MARCH 3, 1989

SPONSOR SEN. VAUGHN

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
Susan J. Sachsenmaier	self	X	
Carolyn Clemens	L&C Co. Atty	X	
Steve Walker	Mont. Wealth Cntr.	X	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Closing by Sponsor: Sen. Harp closed.

DISPOSITION OF SENATE BILL 21

Motion: Rep. Mercer moved that SB 21 BE CONCURRED IN. Rep. Addy seconded.

Discussion: None.

Amendments, Discussion, and Votes: None.

Recommendation and Vote: The motion that SB 21 be recommended BE CONCURRED IN CARRIED with Reps. Wyatt and Brooke opposing.

Rep. Mercer will carry the bill on the house floor.

EXECUTIVE ACTION

DISPOSITION OF SENATE BILL 84

Rep. Brown stated that amendments have been suggested.

Motion: Rep. Darko moved that SB 84 BE CONCURRED IN. Seconded by Rep. Gould.

Discussion: None.

Amendments, Discussion, and Votes: Rep. Darko moved the suggested amendments. Rep. Eudaily seconded.

Rep. Eudaily stated that this amendment does what the sponsor intended.

Rep. Mercer felt that the amendment is beyond the scope of the bill. If this is part of the sentence then it is only restricted to that period of time.

Rep. Strizich stated that as a practical matter the probation and supervision becomes a self-supervised situation but that does not mean that a person cannot be found in violation of his probation or parole.

Rep. Darko stated that the most overpowering reason for such controls is because testimony showed that these people are not in control of themselves. They perform better in controlled situations.

Rep. Boharski made a substitute motion to change "shall" to "may" in the amendment. Rep. Rice seconded. The motion FAILED with Reps. Boharski and Rice voting in favor.

The motion to amend as moved by Rep. Darko CARRIED with Reps. Mercer, Knapp, McDonough and Boharski opposing.

Recommendation and Vote: Rep. Darko moved that SB 84 BE CONCURRED IN CARRIED unanimously.

ADJOURNMENT

Adjournment At: 9:30 a.m.

REP. DAVE BROWN, Chairman

DB/td

5308.MIN

DAILY ROLL CALL

JUDICIARY COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date MARCH 7, 1989

NAME	PRESENT	ABSENT	EXCUSED
REP. KELLY ADDY, VICE-CHAIRMAN	X		
REP. OLE AAFEDT	X		
REP. WILLIAM BOHARSKI	X		
REP. VIVIAN BROOKE	X		
REP. FRITZ DAILY	X		
REP. PAULA DARKO	X		
REP. RALPH EUDAILY	X		
REP. BUDD GOULD	X		
REP. TOM HANNAH			X
REP. ROGER KNAPP	X		
REP. MARY McDONOUGH	X		
REP. JOHN MERCER	X		
REP. LINDA NELSON	X		
REP. JIM RICE	X		
REP. JESSICA STICKNEY	X		
REP. BILL STRIZICH	X		
REP. DIANA WYATT	X		
REP. DAVE BROWN, CHAIRMAN	X		

CS-30

STANDING COMMITTEE REPORT

March 7, 1989

Mr. Speaker: We, the committee on Judiciary report that SENATE BILL 84 (third reading copy -- blue) be concurred in as amended.

Signed: _____
Dave Brown, Chairman

[REP. _____ WILL CARRY THIS BILL ON THE HOUSE FLOOR]

And, that such amendments read:

1. Page 2, line 1.
Following: "45-5-507"
Insert: "(unless the act occurred between 2 consenting persons 16 years of age or older)"

2. Page 4, line 2.
Strike: "Liability for noncompliance with"
Insert: "A convicted sexual offender's duty to register under"

3. Page 4, lines 13 through 21.
Strike: "EMPLOYMENT" on line 13 through end of line 21
Insert: "Sentence upon conviction--restriction on employment. A judge sentencing a person upon conviction of a sexual offense shall, as a condition to probation, parole, or deferment or suspension of sentence, impose upon the defendant reasonable employment or occupational prohibitions and restrictions designed to protect the class or classes of persons containing the likely victims of further offenses by the defendant."